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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/783,354	02/14/2001	Sydney D. Daniel	IRC293-14060/205649	1055

23370 7590 03/28/2002

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EXAMINER

RHEE, JANE J

ART UNIT

PAPER NUMBER

1772

DATE MAILED: 03/28/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/783,354	DANIEL ET AL.
Examiner	Art Unit	
Jane J Rhee	1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on \_\_\_\_.

2a) This action is **FINAL**.                                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) \_\_\_\_ is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_ is/are allowed.

6) Claim(s) 1-24 is/are rejected.

7) Claim(s) \_\_\_\_ is/are objected to.

8) Claim(s) 25 and 26 are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.

4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 25-26, drawn to the method, classified in class 427
- II. Claims 1-24, drawn to the article, classified in class 428

The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by another and materially different process such as one without color.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Mrs. Johnson on December 5, 2001 a provisional election was made with traverse to prosecute the invention of Group II, claims 1-24. Affirmation of this election must be made by applicant in replying to this Office action. Claims 24 and 25 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the

inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claim 1 is rejected under 35 U.S.C. 102(b) as being unpatentable by Desai (6203879 B1).

Desai discloses an orthogonally ambiguous carpet tile (col. 5 line 21).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Desai in view of Hamilton et al (5198277).

Desai discloses an orthogonally ambiguous carpet tile (col. 5 line 21). Desai fails to disclose wherein the tile has a turfted face, woven face, or a fusion bonded face. Hamilton et al teaches a carpet tile wherein the tile has a turfted face, woven face, or a

fusion bonded face (col. 2 line 36-59) for the purpose to provide a more desirable design (col. 3 line 18-24).

It would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided Desai with an orthogonally ambiguous carpet tile wherein the tile has a tufted face, woven face, or a fusion bonded face in order to obtain a more desirable design as taught by Hamilton (col. 3 line 18-24).

3. Claims 5-20, 22-24 rejected under 35 U.S.C. 103(a) as being unpatentable over Desai (6203879 B1).

Desai discloses an orthogonally ambiguous carpet tile (col. 5 line 21). Desai discloses wherein the pattern comprises shapes at least one of which shapes is formed by at least one straight-line oriented parallel to an edge of the carpet tile (see figure 9). Desai discloses that the floor covering comprising at least two orthogonally ambiguous carpet tiles are positioned side by side. (see figure 9) Desai fails to disclose that the shapes are further formed from at least one of a plurality colors comprising at least a background color, a first color, and a second color, wherein at least one of the shapes is formed from the background color only, at least one of the shapes is formed from the background color and the first color only, at least one of the shapes is formed from the background color and second color only, and at least one of the shapes is formed from the background color, the first color, and the second color, wherein the background color, the first color, and the second color have similar intensities and wherein the adjacent shapes comprise at least one common color.

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention was made to have provided shapes that are further formed from at least one of a plurality colors comprising at least a background color, a first color, and a second color, wherein at least one of the shapes is formed from the background color only, at least one of the shapes is formed from the background color and the first color only, at least one of the shapes is formed from the background color and second color only, and at least one of the shapes is formed from the background color, the first color, and the second color, wherein the background color, the first color, and the second color have similar intensities and wherein the adjacent shapes comprise at least one common color since it is known in the art that colors may be modified to meet the consumers' desired pattern absence of showing unexpected results.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jane J Rhee whose telephone number is 703-605-4959. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 703-308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-5408 for regular communications and 703-301-9999 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Jane Rhee  
JR  
March 22, 2002

*Harold Pyon*  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1772

*3/25/02*